THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.4895 OF 2006

Dated: 29th March, 2006.

Between:

N. Rajasekhar … Petitioner

And

1. The Govt. of A.P., rep. by its Principal Secretary,
   Revenue (Ex.II) Dept., Secretariat, Hyderabad
   And 2 others. .. Respondents

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ORDER :

The petitioner was granted a licence in Form 2-B under the provisions of Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 for running the business under the name and style of M/s. Kanakadurga Restaurant & Bar at Door No.42-10-13, Luna Centre, Vijayawada for the year 2005-06. While so, on a request made by him, the 2nd respondent - Commissioner of Prohibition & Excise, A.P., Hyderabad by proceedings dated 18-2-2006 accorded permission for shifting of the licensed premises to Door No.41-29-52, Chalasani Nagar, Krishna Lanka, Vijayawada. The petitioner states that in pursuance thereof he had shifted his business to the new premises on 20-02-2006 itself. In the meanwhile, on a representation made by the respondents 4 and 5, who are also holding Form 2-B licences and running Bar & Restaurants raising objections against the shifting of the petitioner's Bar & Restaurant, the 1st respondent – Government of A.P. vide impugned memo dated 6-3-2006 suspended the order of the 2nd respondent dated 18-2-2006. In pursuance thereof, the 3rd respondent directed the petitioner to go back to the original licensed premises within 3 days. Aggrieved by the said action of the respondents, the present writ petition is filed seeking a declaration that the order of the 1st respondent dated 6-3-2006 as well as the consequential orders passed by the respondents 2 and 3 are arbitrary and illegal and to set aside the same.

I have heard the learned Counsel for both the parties and perused the material on record.

Under Section 64 of the A.P. Excise Act, 1968, the Government may either suo motu or on an application call for and examine the records of any officer in respect of any decision, order or other proceedings made under the Act for the purpose of satisfying themselves as to the correctness, legality or propriety of any such decision and in case it appears to them such decision or order should be modified, annulled, reversed or remitted for reconsideration they may pass order accordingly.

It is not in dispute that the impugned order dated 6-3-2006 has been passed by the 1st respondent in exercise of the said powers of Revision under Section 64 of the A.P. Excise Act. Thus, the impugned order is well within the power conferred

under the statute. The learned Counsel for the petitioner does not dispute the same, but only contends that the impugned order suspending the order of the 2nd respondent without issuing any prior notice to the writ petitioner is arbitrary, illegal and in violation of principles of natural justice. The learned Counsel while relying upon the proviso to Section 64 of the A.P. Excise Act, which provides that no order adversely affecting any party shall be passed unless he has been given an opportunity for making representation, contended that since no such opportunity was provided to the petitioner, the impugned order, on the face of it, being in contravention of the mandatory procedure prescribed under the statute is illegal and liable to be set aside on that ground alone.

It is true that the proviso to Section 64 of the Act mandates prior opportunity to the affected party, however, in my considered opinion, such opportunity is necessary only when a final order is passed by the Government in exercise of its revisional jurisdiction, thereby reversing, modifying or annulling any order or decision made under the A.P. Excise Act or remitting the matter for reconsideration. Since admittedly, the impugned memo was passed pending the revision proceedings under Section 64 of the A.P. Excise Act, as an interim measure, it cannot be held that the said order is bad for want of prior notice to the petitioner.

The learned Counsel for the petitioner further contended that the allegation of the respondents 4 and 5 that there were objections from the residents of the locality for running the Bars which are already existing and that they were not having sufficient business in the locality are all false and without any basis and at any rate in the absence of any statutory prohibition the said objections are not valid under law. I am not inclined to go into the correctness of the said allegations and express any opinion since the said aspects relate to the merits of the case which are required to be considered by the 1st respondent in the Revision Petition pending under Section 64 of the Act. It is always open to the petitioner to raise all the said objections before the 1st respondent, in which event the same will be considered in accordance with law and appropriate orders will be passed.

The learned Counsel for the petitioner while placing reliance upon V. NARAYANA vs. S. BABU RAO AND OTHERS vehemently contended that the respondents 4 and 5 , being rival traders, have no locus standi to question the order of the 2nd respondent permitting shifting of the licensed premises of the petitioner. The

abovesaid decision of the Division Bench in V. NARAYANA'S case (1 supra) which deals with the locus standi of rival traders to invoke the jurisdiction of this Court under Article 226 of the Constitution of India has no application to the case on hand. As a matter of fact, Section 64 empowers the Government to initiate revisional proceedings even suo motu. At any rate, since the Revision Petition is pending before the 1st respondent, it is left open to the petitioner to raise the said objection before the 1st respondent.

For the aforesaid reasons, without expressing any opinion on merits and having regard to the plea of the petitioner that in view of the impugned order he is constrained to close down his business, I deem it appropriate to dispose of the Writ Petition with a direction to the 1st respondent to dispose of the Revision Petition pending on its file as expeditiously as possible preferably within a period of one week from the date of receipt of this order.

The Writ Petition is accordingly disposed of with the above directions and granting liberty to the petitioner to raise all the objections as available under law in the Revision Petition pending before the 1st respondent. No costs.

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G. ROHINI, J.

Dt. 29-03-2006

Note:- CC in 2 days.

(B/O)

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